

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

IN RE:

SUSAN ELIZABETH GALVIN,  
  
Debtor.

CASE NO.: 19-31010-KKS  
CHAPTER: 7

SUSAN ELIZABETH GALVIN,  
  
Plaintiff,  
  
v.

ADV. NO.: 19-03012-KKS

U.S. BANK, N.A., as Trustee,  
  
Defendant.

**ORDER GRANTING *MOTION TO DISMISS* (DOC. 123)**

THIS MATTER came before the Court without a hearing upon the *Motion to Dismiss* (Doc. 123) (“Motion to Dismiss”) filed by Defendant U.S. Bank National Association, as Trustee for Morgan Stanley Dean Witter Capital I Inc., Mortgage Pass-Through Certificates, Series 2002-NC2 (“U.S. Bank”). In the Motion to Dismiss, U.S. Bank moves, in accordance with Federal Rule of Civil Procedure 12(b)(1) and (6) and Federal Rule of Bankruptcy Procedure 7012, to dismiss the *Adversarial Com-*

*plaint and Claims Amended (3) Pursuant to 11 USC 506* (“Amended Complaint,” Doc. 83) filed by self-represented Plaintiff, Susan Elizabeth Galvin. Upon review of the Amended Complaint, the Motion to Dismiss, and the record, the Motion to Dismiss is due to be granted for the reasons that follow.

### **Improper shotgun pleading.**

The rambling and in many respects indecipherable Amended Complaint encompasses improper shotgun pleading; that, alone, is cause for dismissal.

Shotgun pleadings are those from which “it is virtually impossible to know which allegations of fact are intended to support which claim(s) for relief.”<sup>1</sup> As Defendant points out in the Motion to Dismiss, the Amended Complaint comprises more than fifty (50) pages and purports to set forth thirty-two (32) claims. Because facts are either missing or scattered throughout the Amended Complaint, it is difficult to determine precisely what relief Plaintiff is seeking against Defendant, unnamed additional parties, or from this Court.

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<sup>1</sup> *Anderson v. District Bd. Of Trustees of Cent. Florida Community College*, 77 F.3d 364, 366 (11th Cir. 1996).

The Eleventh Circuit has reiterated the impropriety of shotgun pleadings.<sup>2</sup> Following that and other precedent, this Court has dismissed complaints in other adversary proceedings due to improper shotgun pleading.<sup>3</sup> It is appropriate to dismiss the Amended Complaint for improper shotgun pleading.

**Plaintiff's claims as to invalidity of the Final Judgment of Foreclosure are barred by the *Rooker-Feldman* Doctrine.**

The majority of Plaintiff's claims amount to yet another attempt to challenge or attack the validity of the Final Judgment of Foreclosure entered by the Circuit Court in and for Escambia County, Florida in 2015.<sup>4</sup>

It is well-settled that federal courts lack jurisdiction to review, reverse or invalidate a final state court decision.<sup>5</sup> In a case with facts similar to those at bar, on the basis of the *Rooker-Feldman* doctrine the Eleventh Circuit Court of Appeals affirmed the dismissal of a complaint filed by a Chapter 7 debtor against a lender seeking, in part, to attack a final judgment of foreclosure.<sup>6</sup> As in that case, here the state court has made

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<sup>2</sup> *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1294-95 (11th Cir. 2018).

<sup>3</sup> *Southeastern Funding Partners, LLLP v. Williams, et. al.*, Adv. No. 18-01002-KKS, 2018 WL 7575597 (Bankr. N.D. Fla. Dec. 17, 2018); and *Jonsson v. Stinson*, Adv. No. 19-04006-KKS, 2019 WL 3282972 (Bankr. N.D. Fla. June 18, 2019).

<sup>4</sup> Doc. 126.

<sup>5</sup> *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923)

<sup>6</sup> *Bertram v. HSBC Mortgage Services, Inc. (In re Bertram)*, 746 Fed. Appx. 943 (11th Cir. 2018); *see, also, In re Heuser*, 127 B.R. 895, 897 (Bankr. N.D. Fla. 1991) (citing *In re Byard*,

a final determination in the mortgage foreclosure action, so this Court is prohibited by the *Rooker-Feldman* Doctrine from exercising jurisdiction to review the Final Judgment of Foreclosure, which is entitled to full faith and credit in this Court.<sup>7</sup> Because this Court lacks jurisdiction over Plaintiff's renewed attempt to challenge the validity and enforceability of the Final Judgment of Foreclosure, this adversary proceeding is due to be dismissed with prejudice.

**This Court has no jurisdiction over Plaintiff's claims as to the validity or enforceability of the note and mortgage underlying the Final Judgment of Foreclosure.**

In the Amended Complaint, Plaintiff attempts to attack the validity and enforceability of the underlying loan documents on which the state court entered the Final Judgment of Foreclosure. This attempted attack is too little too late. Plaintiff's opportunity to challenge and raise defenses to the validity and enforceability of the loan documents was in the fore-

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47 B.R. 700, 701 (Bankr. M.D. Tenn. 1985) ("a federal court must give to a state court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered.")).

<sup>7</sup> See *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); see also *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923).

closure action. Whether or not Plaintiff availed herself of that opportunity is irrelevant. Any such claims must have been brought in response to the complaint in the foreclosure action.<sup>8</sup>

**The Court has no jurisdiction over Plaintiff's other alleged claims, so it is unnecessary to rule on judicial estoppel or statute of limitations.**

In the Amended Complaint, Plaintiff mentions numerous additional grievances against Defendant and others. At the beginning of and in various other portions of the Amended Complaint, often with no supporting facts, Plaintiff declares that: Defendant made “improper use of [her] identity;”<sup>9</sup> the “participants in the securitization scheme . . . have devised business plans to reap billions of dollars in profits at the expense of Plaintiff and other investors in certain trust funds;”<sup>10</sup> she is entitled to “compensatory, consequential and other damages” against unknown and unnamed persons;<sup>11</sup> and that this Court should grant her, in the alternative to declaratory relief as to what party is the owner of the promissory note executed at the time of the loan closing, “a Mandatory Injunction

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<sup>8</sup> *Montgomery Ward Dev. Corp. v. Juster*, 932 F.2d 1378, 1380-82 (11th Cir. 1991).

<sup>9</sup> Doc. 83, p. 5.

<sup>10</sup> *Id.* at p. 6.

<sup>11</sup> *Id.*

requiring conveyance of the subject property to [her] or, in the alternative, granting [her] Quiet Title [sic] in the subject property and the Promissory Note Cancelled.”<sup>12</sup>

As Defendant accurately points out, this Court lacks jurisdiction over all of these additional purported causes of action because none arise under or are related to Plaintiff’s Chapter 7 bankruptcy case. The Trustee has issued a “no asset report,”<sup>13</sup> meaning that administration of the case for the benefit of creditors is at an end. Plaintiff’s discharge was issued on February 20, 2020,<sup>14</sup> so any assets Plaintiff listed when she filed her Chapter 7 petition are no longer assets of the bankruptcy estate and the automatic stay is terminated. In short, the pendency of this adversary proceeding appears to be the only reason Plaintiff’s Chapter 7 case has not yet been closed. Because no ruling on any potential claims in this

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<sup>12</sup> *Id.* At other places in the Amended Complaint, Plaintiff raises that the original loan was usurious; there were problems with the “pooling and security agreement” that came after the loan; that the loan was at one point paid in full when it was sold or placed into the REMIC (real estate trust); that Defendant has no standing to enforce the loan; that the REMIC engaged in prohibited transactions; that Defendant did not advise Plaintiff that the original loan was not in her best interest; that Defendant failed to give her Truth In Lending disclosures before the loan closing; that she responded to “false and deceptive” advertising when she responded to an add by Lending Tree to obtain the loan; and that the original lender was a “fake bank.” *Id.* at pp. 7, 9, 11, 12, and 16-19.

<sup>13</sup> *In re Galvin*, Case No. 19-31010-KKS, Doc. 51, *Chapter 7 Trustee’s Report of No Distribution* (Bankr. N.D. Fla. Jan. 7, 2020).

<sup>14</sup> *In re Galvin*, Case No. 19-31010-KKS, Doc. 62, *Order of Discharge* (Bankr. N.D. Fla. Feb. 20, 2020).

adversary proceeding can benefit Plaintiff's creditors of the bankruptcy estate, it is unnecessary to rule on whether such claims may be barred by judicial estoppel or a statute of limitations. In the event Plaintiff brings her claims in some other forum, those issues are preserved.

For the reasons stated, it is

ORDERED:

1. The *Motion to Dismiss* (Doc. 123) is GRANTED.
2. The Amended Complaint is DISMISSED with prejudice.
3. The hearing on the Motion to Dismiss, currently scheduled for August 25, 2020 is CANCELED.

DONE and ORDERED on August 14, 2020.



KAREN K. SPECIE  
Chief U.S. Bankruptcy Judge

Defendant's attorney is directed to serve a copy of this Order on interested parties and file a certificate of service within three (3) days of entry of this Order.